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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 366

KNICKERBOCKER PRINTING CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is reported at 102 F. Supp. 854 (R. I. 192-200), and that of the Court of Appeals at 212 F. 2d 894 (R. II 53-55).

JURISDICTION

The judgment of the Court of Appeals was entered May 14, 1954 (R. II 56). A petition for rehearing was denied June 7, 1954 (R. II 69). By order of Mr. Justice Jackson dated September 3, 1954, the time for filing a petition was extended to September 25. The petition for certiorari was filed

September 24, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in a condemnation proceeding by the United States, a tenant which had previously owned the property taken was entitled to compensation for annexations to the building made in connection with the installation of machinery prior to the commencement of its tenancy.

STATEMENT

Certain land in New York City, improved by a building used as a printing establishment, was acquired by petitioner in February, 1946 (R. I 141, 166-169). In April, 1946, petitioner conveyed the land, building and improvements to a separate corporation (R. I 170-173) which later sold the property to the owners who held title at the time of the taking here involved (R. I 161-163). In May, 1946, the petitioner became the tenant of the property under a 21-year lease (R. I 25). Paragraph 13 of this lease provided:

> If the whole or any part of demised premises shall be taken or condemned by any competent authority for any public or *quasi* public use or purpose, then, and in that event, the term of this lease shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose, and without apportionment of the award. *Rider 4* [typewritten addition to printed lease] In the

event of such proceeding, the landlord shall give written notice of such proceeding to the Tenant and shall permit the Tenant to be joined as a party to such proceeding. The Tenant shall be entitled to receive such part of any condemnation award as may reflect the Tenant's costs and expense from moving from the premises, the value of the lease and/or the value of any improvements made by the tenant to the extent that same were not amortized over the balance of the term of the lease. The current rental, however, shall in any such case be apportioned.

Paragraph 38 provided:

38. [typewritten] Tenant shall have the right, at any time, and without the permission of the landlord, to remove from the demised premises any or all of Tenant's machinery, trade fixtures, and/or personal property, regardless of the manner in which such machinery, trade fixtures, or personal property may have been affixed to the realty, provided, that tenant shall, at its own cost and expense, repair any and all damage or injury to the demised premises occasioned thereby, so that the premises after such removal shall be in as good condition (reasonable wear and tear excepted) as before the removal of said machinery, trade fixtures, or personal property.

In connection with the printing business, certain fixtures such as racks, shelves and bins, and certain

machine and motor connections are alleged to have been annexed to the building (R. I 31-33). A finding was made that none of these so-called "trade fixtures" were installed by the petitioner (R. I 206-207).

On November 29, 1948, the United States filed a declaration of taking of the property (R. I 12-20). Commissioners appointed by the court found that $750,000 constituted just compensation "for the taking of the absolute fee simple title to the said premises, including all improvements thereon * * *." (R. I 182.) Of this sum they awarded $175,000 to petitioner for loss of its leasehold interest (R. I 184). But, the commissioners added, they had disallowed petitioner's claim for fixtures allegedly installed by it since the tenant had no title thereto under the terms of its lease (R. I 186-190). Since the landlord had "disavowed" any claim on that account, the award of $750,000 did "not reflect any value for annexations which the tenant claims to have made." (R. I 183.)

However, the district court took the view that provisions of the lease reserved to petitioner its interest in trade fixtures which it had attached to the property (R. I 199). It added: "Whatever may have been the landlord's right, if any, to make claim for the value of these fixtures, the fact that it failed to do so should not inure to the benefit of the United States. Any such result would be an inequitable and most unjust deodand." (R. I 199) Accordingly, the court directed the commissioners to hold further hearings in order to determine "the

just compensation and value, if any, of trade fixtures which may have been installed by" petitioner and to increase the award to petitioner by that amount (R. I 204). To meet the argument that this order limited the evidence to fixtures installed by petitioner, excluding additions made by the prior owner when it occupied the building, petitioner moved the District Court to resettle the order to include all trade fixtures by whomsoever annexed (R. II 1). This the District Court refused to do (R. II 20).

The commissioners held a hearing and reported that petitioner "did not install any trade fixtures in the building." (R. I 207) The district court confirmed the report (R. I 208-209) and the court of appeals affirmed its judgment (R. II 53-55).

ARGUMENT

Petitioner seeks to raise a constitutional issue, that property was taken from it without compensation (Pet. 2). But the issue actually is not whether petitioner is entitled to compensation for any property taken from it, but whether it had any property right in the fixtures for which it was claiming compensation.

The District Court in effect found that petitioner's only right was under the lease to such annexations as had been made by it (R. II 199, 204). Previous improvements would have passed from the petitioner at the time of transfer of the land and building (R. I 170-172). The terms of the lease, which would constitute the tenant's only claim

to fixtures, referred only to improvements made by the tenant (R. I 25).

Petitioner contests the decision, claiming in effect that the owner of the building never acquired title to the earlier annexations but that these continued to be held by petitioner (Pet. 7-9). The construction of the documents involved adopted by the District Court and affirmed by the Court of Appeals appears to be right, but in any event the issue is not one of general importance which should be reviewed by this Court. Nor is there any failure to follow the New York real property law cited by petitioner (Pet. 13) which requires compensation to a tenant on a taking of real estate only to the extent that under the lease he has a claim in the annexations.

The petitioner argues that the United States has acquired property without paying anyone just compensation for it. The Commissioners who recommended the award of $750,000 state that the value of all annexations except those made by the tenant, of which it later found there were none, was included in their award (R. II 44, 46-47, 49). But even assuming the contrary, petitioner has no complaint unless it can establish a legal interest in the improvements, which issue was decided against it by both the District Court and the Court of Appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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